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officer

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

W.P.No. 620/2003

Petitioner: -

Shri Muddu Venkat Narayan Rao
Memorial School Society.

Reg. No.905 Dt.22/06/1967.

Khursipar, Zone-3, P.O. Khursipar
Teh. & Dist. Durg (C.G.)

Through:- Genral Secretary
29/06/2003
Y.A.Rao, R/o- Bajrang Kirana
Store, Khursipar Gate, Zone-2,
Khursipar, Bhilai, Teh. & Dist.
Durg (C.G.)

Versus

Respondents: -

State Of Chhattisgarh Through:-

- R1. Secretary
Ministry of Commerce and
Industry Department.
Mantralaya D.K.Bhavan,
Raipur (C.G.)
- R2. Registrar
Firms & Societies,
RAIPUR (C.G.)
- R3. Assistant Registrar
Firms & Societies,
0/5-Anupam Nagar, Raipur
Division, RAIPUR (C.G.)

P. R. No. 325/03
Presented by Shri. V. Hem. P. P. P.
dated 01.02.03



Attorney

Arup, 5/12/03

1-2-03

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मानव
विद्युत
उत्पत्ति
उपयोग

*Respondent No.1A :

~~Shri. Mahendra Kumar Bhat~~
Sachak Achikari Commerce and
Industry Department, Mantralaya
D.K. Bhavan Raipur Chhattisgarh

Amended
vide order dated 27.6.03
order dated 30.6.03

Attended

- Q. 4. M. Bhakar Rao, S/o. M.V. Rao,
R/o. Balaji Cycle Store,
Priyadarshini Market,
Ganesh Mandir, Khursipar,
Bhilai, Distt. Durg (C.G.).
5. R.L. Vahne, S/o. L.G. Vahne,
R/o. Dr. Vahne Bhawan, Kohka
Road, Supela, Bhilai, Distt.
Durg (C.G.).
6. M. Kurma Rao, S/o. M.V. Rao,
R/o. c/o. Balaji Cycle Store,
Priyadarshini Market, Ganesh

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Mandir Khursipar,
Bhilai, Distt. Durg (C.G.).

7.

S.G. John Victor,
S/o. Late George Prabhu Das,
R/o. House No. 301, Street
No. 9, Shanti Nagar, Bhilai (CG)

8.

A. Gopal Rao, S/o. Alappa,
R/o. Street No. 1, Gr. No. 8-B
Zone 3, Khursipar, Bhilai (C.G.)

9.

Smt. Vinla Victor,
W/o. S.G. John Victor,
R/o. House No. 301, Street
No. 9, Shanti Nagar, Bhilai
(Chhattisgarh).

10.

Smt. Parvati Rao,
W/o. M. Bhaskar Rao,
Priyadarshini, Market,
Ganesh Mandir, Khursipar,
Bhilai, Distt. Durg (C.G.).

11.

Sheshkar Rao, S/o. M.R. Murty,
R/o. C/o. Balaji Cycle Store,
Priyadarshini Market,
Ganesh Mandir, Khursipar,
Bhilai, Distt. Durg (C.G.).

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(118)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 620/2003

Shri Muddu Venkat Narayan Rao
Memorial School Society

Versus

State of C.G. and others

ORDER

Post for : 5/1/2004.

Sd/-
Fakhruddin
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 620/2003

Shri Muddu Venkat Narayan Rao
Memorial School Society

Versus

State of C.G. and others

ORDER

Per Fakhruddin J.

The petitioner has filed the present petition challenging the order dated 17-1-2003 passed by respondent No.1, received under reference No.176/2003/11/Ba. U. Raipur, dated 20-01-2003.

2. The facts in brief are that the petitioner is an office bearer of the Society registered as Shri Muddu Venkat Narayan Rao Memorial School Society. The election of the Society was to be held on 05-01-2003 and for that purpose the meeting was called on 03-11-2002. Annexure-P/8 is the document in that regard. It is said that the election was accordingly held on 05-01-2003 as per Annexure-P/9 and the list of office bearer was submitted by the Secretary as per Annexure-P/10. Annexure-P/11 is the certificate issued by the Assistant Registrar under Section 27 of the Society Registrikaran Adhiniyam, 1973 (hereinafter referred to as the Adhiniyam in short) dated 15-1-2003. Respondent Nos. 4 to 11

filed an appeal under Section 40 of the Adhiniyam on 17-1-2003 before the Bharsadhak Adhikari stating that the Registrar, Firms and Societies, is on leave and now the State is only the alternative forum. It was stated that the opportunity of hearing was not afforded to them in the general meeting held on 05-01-2003. The Bharsadhak Adhikari, who is the Minister, entertained the appeal and passed an order on 17-1-2003 itself. It is stated that the Assistant Registrar was called for by the Bharsadhak Adhikari.

3. Section 32 of the Adhiniyam relates to enquiry and settlement of dispute, which is quoted below:

"32. Enquiry and settlement of disputes-

(1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorized by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on the application of-

- (a) a majority of the members of the governing body of the society; or
- (b) not less than one-third of the total number of members of the society.

(3) The Registrar or the person authorized by him under sub-section (1) shall for the purpose of an enquiry under this section have the following powers, namely:-

- (a) he shall at all times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession, or responsible for the custody of any such books, accounts documents, securities, cash or other properties to produce the same, if they relate to the head office of the society at

any place at the headquarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

- (b) he may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof or in his own office and may examine such person on oath; and
- (c) (i) he may notwithstanding any regulation or byelaw specifying the period of notice for a general meeting of the society, require the officers of the society, call a general meeting of the society at such time at the head office of the society or at any other place at the headquarter of the society and to determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;
(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the regulations or byelaws of the society and its proceedings shall be regulated by such byelaws.
- (d) When an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society. The decision of the Registrar shall be binding on all parties concerned."

4. Section 40 of the aforesaid Adhiniyam relates to preference of an appeal, which is quoted below:

"40. Appeal- (1) An appeal against the order of the Registrar shall lie-

- (a) if the order is made by the Registrar, to the State;
- (b) if the order is made by any other persons to the Registrar and against such order of the Registrar to the State Government.

(2) An appeal under sub-section (1) shall be filed within two months of the date of communication of the order:

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period."

5. It is submitted by the learned counsel for the petitioner that for enquiry and settlement of dispute under Section 32(2) of the Adhiniyam, an enquiry shall be held on the application of a majority of the members of the governing body of the society or not less than one-third of the total number of members of the society. It is further submitted that the requirement of Section 32(2) of the Adhiniyam is not there. The application is not supported by majority of members nor one-third of the governing body, as such it could not have been entertained. It is also submitted that if it is to be held as an appeal, then the appeal to the State Government lies when the order is made by the Registrar. In the instant case the order dated 05.01.2003 is not made by the Registrar. The contention therefore is that the Bharsadhak Adhikari i.e the Minister concerned had no jurisdiction.

6. Shri Rajiv Shrivastava, learned counsel appearing for respondents No.4 to 11, however submitted that prima facie the Bharsadhak Adhikari is having the jurisdiction. He referred to the definition of the "Registrar" which is mentioned in Section 3(c) of

the Adhiniyam and submitted that if the Registrar was not present, then the State was an alternative forum.

7. Section 3 (c) of the Adhiniyam is relevant, which is quoted below:

"3. Definitions-

(a) XXXX XXXX XXXX

(b) XXXX XXXX XXXX

(c) "Registrar" means the Registrar of the societies appointed under sub-section (1) of Section 4 and includes an Additional, Joint, Deputy and Assistant Registrars of Societies, appointed under sub-section (2) of the said section when exercising or performing all or any of the powers or duties of the Registrar."

8. Having considered the facts and circumstances of the case and material on record, so far as the enquiry and settlement of dispute under Section 32(2) of Adhiniyam is concerned, it is evidently clear that the enquiry shall be held on the application of a majority of the members of the governing body of the society or not less than one-third of the total number of members of the society. The application is not supported by majority of members nor one-third of governing body. The total members of the society are 35 and the application ought to have been filed by 11.66 i.e. 12 members but the same had been filed by only 8 members. As such, the requirement was not fulfilled. So far as the question of filing of an appeal before the Bharsadhak Adhikari i.e. the Minister concerned, in the instant case the order dated 05.01.2003 admittedly was passed by the Assistant Registrar and then if the

appeal is filed it ought to have been filed before the Registrar. If the Registrar was on leave, then the matter ought to have been placed before the Additional Registrar or so. It is not a case that there is no Additional Registrar or Joint Registrar. The Registrar means the Registrar, Additional Registrar, Joint Registrar etc. of the society as defined under Section 3(c). The appeal therefore filed before the Bharsadhak Adhikari i.e. the Minister concerned was not maintainable and the order passed accordingly is not sustainable.

9. At this stage, learned counsel for respondents No.4 to 11 prayed that the said respondents may be given an opportunity to prefer a petition / appeal before the Registrar / Additional Registrar. The prayer is not opposed.

10. Having thus considered, it is directed that if such an appeal/petition is filed within fifteen days, it shall be examined by the Registrar and considered on its own merits in accordance with law.

11. Subject to what has been stated above, this writ petition stands disposed of.

Hande/

Sd/-
Fakhruddin
Judge